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NURSING HOME REGULATIONS

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Final Draft Prior to Public Hearings
August 4, 1975

REGULATION 1: Definitions

1.1 Administrator: the person charged with the general administration of a nursing home, his agents or employees, and as further defined in the Rules and Regulations for the Licensing of Long Term Care Facilities of the Department of Public Health;

1.2 Attorney General's regulations: regulations relating to nursing homes promulgated by the Attorney General of the Commonwealth of Massachusetts on _____.

1.3 Emergency: a situation, as determined by a physician, in which a resident is engaging, or is very likely to engage, in conduct that is causing, or would cause, serious injury to him/herself or to others; or, a situation, as determined by a physician, in which the resident's medical condition is such as to require immediate medical attention or treatment;

1.4 Chemical restraint: a drug that is administered to a resident where the primary purpose of administering the drug is to calm, sedate, or restrain the resident and where the drug is not part of the resident's plan for medical treatment;

1.5 Licensee: any person, corporation, or other entity that has a license to operate a nursing home, his agents or employees;



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1.5 Licensee: any person, corporation, or other entity that has a license to operate a nursing home, his agents or employees;

1.6 Nursing Home: any institution whether conducted for charity or profit which is advertised, announced or maintained for the express or implied purpose of providing three or more individuals admitted thereto with long-term resident, nursing, convalescent or rehabilitative care; supervision and care incident to old age for ambulatory persons, or retirement home care for elderly persons. Nursing home shall include convalescent or rest homes, infirmaries maintained in towns and charitable homes for the aged.

1.7 Physical restraint: any apparatus, article, device or garment applied to a resident that interferes with the free movement of the resident and that cannot be easily removed by the resident; seclusion or isolation of a resident shall be considered a "physical restraint";

1.8 Private nursing home: a nursing home that admits, or provides services to, only private residents;

1.9 Private resident: a resident of a nursing home whose stay in the nursing home is not paid for, in whole or in part, by public funds;

1.10 Resident: any individual or patient residing in or receiving care in a nursing home;

1.11 Additional Services: services provided by a nursing home that are not included in the basic per diem rate or not included under titles XVIII or XIX of the Social Security Act, as amended;

1.12 Social Security Act: titles XVIII and XIX of the Social Security Act, as amended;

1.13 Sponsor: a person or agency legally responsible for the well-being or support of a resident or a person or agency actually providing support to a resident whether or not legally responsible for that support;

1.14 Treatment: any medication, drug, test or procedure conducted or administered for the purpose of diagnosing or treating a physical or mental illness or condition.

UNFAIR OR DECEPTIVE ACTS OR PRACTICES

REGULATION 2: General

It shall be an unfair or deceptive act or practice, in violation of M.G.L. ch. 93A, §2, for a licensee or an administrator

2.1 to fail or refuse to inform a resident and his/her next of kin, guardian or sponsor prior to or at the time of admission of all existing regulations or policies of the nursing home, if any, regarding the rights and responsibilities of residents, or to fail or refuse to furnish a copy of any such regulations or policies (as evidenced by the resident's written acknowledgement of receipt) to a resident prior to or at the time of admission to the nursing home;

2.2 to fail or refuse to inform a resident and his/her next of kin, guardian or sponsor prior to or at the time of admission to the nursing home of the Attorney General's

regulations or to fail or refuse to furnish a copy of those regulations (as evidenced by the resident's written acknowledgment of receipt) to the resident prior to or at the time of admission to the nursing home;

2.3 to fail or refuse to post a copy of the Attorney General's regulations and of the written policies (if any) relating to the rights and responsibilities of residents prominently and conspicuously in each identifiable unit (as defined in regulations promulgated by the Department of Public Health) in the nursing home;

2.4 to fail or refuse to inform a resident and his/her next of kin, guardian or sponsor at or prior to the time of admission that the nursing home has written policies, in addition to the Attorney General's regulations and to those (if any) pertaining to resident's rights and responsibilities, or to fail or refuse to make those policies available, upon request, to the resident and his/her next of kin, guardian or sponsor at any reasonable time during the resident's stay in the nursing home;

2.5 to fail or refuse to inform an existing resident and his/her next of kin, guardian or sponsor of the regulations, policies or information specified in Regulation 2.1, 2.2 and 2.4 within twenty days after the effective date of the Attorney General's regulations;

2.6 to fail or refuse to furnish to an existing resident a copy of the regulations or policies specified in Regulation 2.1 and 2.2 (as evidenced by the resident's written acknowledgment of receipt) within twenty days after the effective

date of the Attorney General's regulations;

2.7 to fail or refuse to respond promptly and fully to any reasonable inquiries relating to any of the policies, regulations or procedures relating to or established by the nursing home by a resident or by his/her next of kin, guardian or sponsor at any time during the resident's stay in the nursing home;

2.8 to retaliate, or threaten to retaliate, against a resident for exercising, or attempting to exercise, his/her rights as a resident;

2.9 to fail or refuse to comply with any federal, state or local statutes or regulations relating to nursing homes, except that a licensee or administrator of a private nursing home need not comply with statutes or regulations that apply only to nursing homes that participate in federal or state health programs under the Social Security Act.

REGULATION 3: Charges

It shall be an unfair or deceptive act or practice, in violation of M.G.L. ch. 93A, §2, for a licensee or an administrator

3.1 to fail or refuse to disclose in writing to all prospective residents and their sponsors before admission to a nursing home

- a. the existing basic per diem rate, applicable to the prospective resident, charged by the licensee and all services included in that

rate; and

- b. services available to the resident that are covered by the Social Security Act, but that are not included in the basic per diem rate; and
- c. all additional services available to the resident and the charge for each of those services;

3.2 to fail or refuse to disclose in writing to an existing resident and his/her sponsor the information required in Regulation 3.1a, 3.1b and 3.1c within twenty days after the effective date of the Attorney General's regulations, unless the licensee or administrator has done so prior to the effective date of those regulations;

3.3 to impose, or seek to impose, a charge in addition to the basic per diem rate for services included in the basic per diem rate;

3.4 to charge for services not actually rendered to a resident, except that a licensee or administrator may charge for services included in the basic per diem rate that are not medically required by the resident during a particular billing period;

3.5 to fail or refuse to provide all the services included in the basic per diem rate, except where the resident does not medically require services that are included in the basic per diem rate;

3.6 to provide and charge for additional services, except for medical services required in an emergency, without

prior written request for those services by the resident or his/her sponsor;

3.7 to charge an amount for additional services, except for medical services required in an emergency, that is in excess of the amounts disclosed prior to the time of admission unless the resident or his/her sponsor has signed written request for those services at the higher charge;

3.8 to fail or refuse to permit a resident or his/her sponsor to examine or receive, upon request, a reasonable explanation of the charge or bill for his/her care in the nursing home, regardless of the source of payment;

3.9 to increase the charge for additional services received by a resident without written notification of the higher rate to the resident and his/her sponsor at least one month prior to the effective date of the increase;

3.10 in the case of a private resident, to increase the basic per diem rate without written notification to the resident and his/her sponsor of the higher rate at least one month prior to the effective date of the increase.

REGULATION 4: Access to persons outside facility

It shall be an unfair or deceptive act or practice, in violation of M.G.L. ch. 93A, §2, for a licensee or an administrator

4.1 to fail or refuse to permit a resident to associate or communicate privately, either inside or outside the nursing home, with persons of his/her choice at reasonable

hours or to permit a resident to receive or refuse visitors, unless medically contraindicated as documented by his/her physician in his/her medical record;

4.2 to fail or refuse to permit a resident private and unrestricted communications with his/her spouse, physician, or attorney;

4.3 to fail or refuse to assure to a married resident privacy during visits by his/her spouse, to the fullest extent possible under the circumstances;

4.4 to fail or refuse to permit a resident to meet with or participate in activities of social, religious, and community groups at his/her discretion, unless medically contraindicated as documented by his/her physician in his/her medical record;

4.5 to fail or refuse to permit a resident to send or receive personal mail unopened, unless medically contraindicated as documented by his/her physician in his/her medical record;

4.6 to fail or refuse to assure privacy, to the fullest extent possible under the circumstances, to residents when making or receiving telephone calls;

4.7 to fail or refuse to permit a resident to present grievances on behalf of him/herself or others to the nursing home's staff, to government officials, or to any other person free from restraint, interference, coercion, discrimination or reprisal;

4.8 to fail or refuse to permit a resident to join with other residents or individuals within or outside of the nursing home to work for improvements in patient or resident care;

4.9 to fail or refuse to provide access to the nursing home to individuals or to representatives of community groups or of other groups who seek to visit residents or to provide volunteer services to residents at reasonable hours;

4.10 to fail or refuse to provide access to the nursing home to individuals or representatives of community groups or of other groups who seek to provide legal or social services to residents without charge to the residents at reasonable hours;

REGULATION 5: Resident Care

It shall be an unfair or deceptive act or practice, in violation of M.G.L. ch. 93A, §2, for a licensee or an administrator

5.1 to fail or refuse to encourage or assist, upon request, a resident throughout his/her stay in the nursing home to exercise his/her rights as a resident or as a citizen;

5.2 to fail or refuse to treat a resident with consideration, respect and full recognition of his/her dignity and individuality;

5.3 to fail or refuse to permit a resident to manage his/her personal financial affairs; except that a licensee or administrator may require a resident to deposit his/her private funds into an account at the nursing home for purposes of safekeeping, provided that the licensee or administrator permits the resident to withdraw any amount from his/her account at any time;

5.4 to exercise control over a resident's personal funds without a resident's written delegation that is signed by the resident and that specifies the manner, extent, and duration

of the control over such funds;

5.5 to fail or refuse to permit a resident to rescind at any time a written delegation authorizing control over the resident's funds;

5.6 to fail or refuse to provide the resident or his/her sponsor a quarterly accounting of financial transactions made in his/her behalf if the licensee or administrator accepts his/her written delegation;

5.7 to fail or refuse to tender to a resident the full personal care allowance permitted by law or authorized by the sponsor at the time the nursing home exercises control over funds to which the resident is entitled, unless otherwise requested in writing by the resident;

5.8 to fail or refuse to permit a resident to retain or use his/her personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

5.9 to require a resident to perform services for the nursing home that are not included for therapeutic purposes in his/her plan of care, except where a resident wishes to perform services for reasonable consideration;

5.10 to fail or refuse to respond promptly and fully, within the capacity of the licensee or administrator, to all reasonable requests or inquiries by a resident or his/her next of kin, guardian or sponsor;

5.11 to fail or refuse to arrange for mentally and socially compatible roommates, within the capacity of the nursing home, if the room is shared with unrelated persons;

5.12 to fail or refuse to permit married residents to share a room, if such an arrangement is within the capacity of the nursing home, unless medically contraindicated as documented by the resident's physician in his/her medical record.

REGULATION 6: Medical Care

It shall be an unfair or deceptive act or practice, in violation of M.G.L. ch. 93A, §2, for a licensee or an administrator

6.1 to fail or refuse to assure a resident privacy during medical examination or treatment or during care for his/her personal needs, except where the treatment or care consists of the administration of oral drugs;

6.2 to fail or refuse to permit a resident to examine, upon request and at reasonable times, all the medical or personal records relating to that resident, unless medically contraindicated as documented by his/her physician in his/her medical record;

6.3 to fail or refuse to respond promptly, to the licensee's or administrator's best knowledge, to any inquiry by the resident relating to anything in the resident's medical or personal records, unless medically contraindicated by his/her physician in his/her medical record;

6.4 to fail or refuse to permit any person who has a resident's written authorization to examine, at reasonable times and upon request, all the medical and personal records relating to that resident or to fail or refuse to respond promptly, to the licensee's or administrator's best knowledge, to any inquiry relating to anything in the resident's medical or personal

records by the person who has the resident's written authorization; except that, a licensee or administrator may require that such a person not speak about the resident's personal or medical records with the resident if the resident's physician has indicated in writing in the resident's medical record that the resident should not be permitted to examine his/her personal records;

6.5 to subject a resident to mental or physical abuse;

6.6 to subject a resident to chemical or physical restraints, except in emergencies, unless authorized in writing by a physician for a specified and limited period of time;

6.7 in emergencies, to subject a resident to chemical or physical restraint except as authorized orally by a physician for a specified and limited period of time, or to fail or refuse to record the physician's authorization in the resident's medical record as soon as possible after receiving the physician's authorization;

6.8 to fail or refuse to provide adequate supervision of a resident while the resident is being restrained;

6.9 to fail or refuse to record in a resident's personal or medical records, on a daily basis, each time and date that the resident was restrained or to fail or refuse to record the specific reason(s) for the restraint, the nature of the restraint, and the duration of the restraint, if known;

6.10 to fail or refuse to keep separate records of all chemical or physical restraints or to fail or refuse to include in those records the name of the resident that was restrained, the specific reason(s) for the restraint, the

nature of the restraint, the time and date administered, the duration of the restraint, if known, and the manner in which the resident was supervised during the restraint;

6.11 to fail or refuse to make the separate records relating to restraints available upon request to any federal, state, or local authority authorized to enforce the Attorney General's regulations or other regulations relating to the medical or personal care of residents in nursing homes;

6.12 to provide or administer, except in emergencies, any treatment not specifically prescribed by a physician in writing or in amounts or doses in excess of the amount prescribed;

6.13 in emergencies, to provide or administer any treatment not specifically prescribed orally by a physician or in amounts or doses in excess of the amount prescribed or to fail or refuse to record the oral prescription in the resident's medical records as soon as possible after receiving the oral prescription;

6.14 to require a resident to participate in experimental research;

6.15 if a resident wishes to participate in experimental research, to permit a resident to do so without informing the resident of the exact nature of the research and the likely effects on the resident of the experimental research or without obtaining the resident's prior written consent to participate in that research;

6.16 to fail or refuse to permit a resident to participate in the planning of his/her medical treatment,

unless medically contraindicated as documented by his/her physician in his/her medical record;

6.17 to fail or refuse to inform a resident, at the time the resident requests the information, of the nature of the treatment and the likely effects of the treatment if the licensee or administrator has the requested information, unless medically contraindicated as documented by his/her physician in his/her medical record;

6.18 to fail or refuse to make prompt and good faith efforts (as evidenced by written documentation of those efforts) to obtain information about the nature of the treatment and its likely effects on the resident or to fail or refuse to provide a resident with that information, as soon as possible, if a resident has requested the information and if the licensee or administrator does not have that information, unless medically contraindicated by his/her physician in his/her medical record;

6.19 to fail or refuse to provide or administer the treatment, or to fail or refuse to make reasonable attempts to do so, at each time and on each date that the treatment is prescribed by a physician;

6.20 if a resident refuses treatment or a chemical restraint, to fail or refuse to inform the resident of the likely consequences of the failure to receive the treatment or chemical restraint at the time of the resident's refusal, if the licensee or administrator has the information;

6.21 if a resident refuses treatment or a chemical restraint, to fail or refuse to make prompt and good faith

efforts (as evidenced by written documentation of those efforts) to obtain information about the likely consequences of a resident's refusal to receive the treatment or chemical restraint or to provide the resident, as soon as possible, with that information if the licensee or administrator does not have the information;

6.22 to release a resident's personal or medical records to any individual outside the nursing home without the prior written approval of the resident, except in case of his/her transfer to another health care institution or as required by law or third-party contract;

6.23 to fail or refuse to provide to a resident, upon request, the name and specialty of the physician or other person responsible for the resident's care or for the coordination of care;

6.24 to fail or refuse to assign, upon request, to a resident the physician of the resident's choice, within the capacity of the nursing home.

REGULATION 7: Discharge and Transfers

It shall be an unfair or deceptive act or practice, in violation of M.G.L. ch. 93A, §2, for a licensee or an administrator

7.1 to transfer or discharge a resident, against a resident's wishes, except

- a. upon a physician's written order with reasons for transfer or discharge to be noted in the resident's medical records; or

- b. for reasons related to his/her welfare or that of other residents, as documented in the resident's personal or medical records; or
- c. for nonpayment for his/her stay, except as prohibited by the Social Security Act; or
- d. as otherwise permitted under Regulation 7.7;

7.2 to fail or refuse to keep, upon request, a resident's bed and space in the nursing home available to the resident for at least one month after the date that the resident temporarily leaves or is transferred from the nursing home if the resident or his/her sponsor are tendering to the nursing home the amount accruing for the resident's stay during the resident's absence from the nursing home;

7.3 to fail or refuse to inform a resident and his/her next of kin, guardian, or sponsor prior to the time that the resident leaves or is temporarily transferred from the nursing home that the licensee or administrator will keep the resident's bed and space in the nursing home available to the resident for at least one month after the date of the temporary absence or transfer if the resident so requests and if the resident or sponsor continues to tender to the nursing home the amount accruing for the resident's stay during the resident's absence from the nursing home;

7.4 to fail or refuse to inform the resident and his/her sponsor in writing the specific reasons for discharge or transfer;

7.5 except where a resident voluntarily leaves a

nursing home, to fail or refuse to give, except in emergencies, reasonable advance written notice, of at least one month, of the transfer or discharge to the resident and his/her sponsor to ensure an orderly transfer or discharge or to fail or refuse to place a copy of that notice in the medical records of the resident;

7.6 to fail or refuse to establish discharge or transfer procedures that are reasonably calculated to ensure an orderly discharge or transfer of a resident or to fail or refuse to document the procedures used with regard to a resident in his/her medical records;

7.7 except in the case of a private nursing home, to discharge or transfer a private resident because the resident has ceased, or plans to cease, being a private resident;

7.8 in the case of a private nursing home, to fail or refuse to inform, both orally and in writing, a prospective resident and his/her next of kin, guardian or sponsor before the resident is admitted to the nursing home that the resident may be transferred or discharged if the resident ceases to be a private resident;

7.9 in the case of a private nursing home, to fail or refuse to inform, both orally and in writing, an existing resident and his/her next of kin, guardian or sponsor within twenty days after the effective date of the Attorney General's regulations that the resident may be transferred or discharged if the resident ceases to be a private resident;

7.10 if a licensee or administrator voluntarily ceases to provide a level of care, to fail or refuse to give

written notification to a resident and his/her sponsor that the nursing home will cease to provide the level of care required by the resident at least one month before the nursing home ceases to provide that level of care.

REGULATION 8: Enforcement of Regulations

8.1 A resident's next of kin, guardian or sponsor may seek to enforce the Attorney General's regulations on behalf of the resident if

- a. a resident has been adjudicated incompetent in accordance with state law; or
- b. a resident is found by a physician to be medically incapable of understanding the Attorney General's regulations; or
- c. a resident is incapable of communicating effectively with the licensee or administrator because of a language barrier.

REGULATION 9: Effective Date

9.1 The Attorney General's Regulations shall become effective on _____, 1975.

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